

MEMORANDUM

TO: Commissioners

FROM: Philip E. Stutzman, Director of Compliance

DATE: March 24, 2005

SUBJECT: Request to Reconsider Directive to Hold Enforcement Hearings and Approve Dismissal for John Ladenburg, Pierce County Executive, Case #04-440 and Bill Ptacek, Director, King County Rural Library District, Case #05-125

With respect to the enclosed enforcement letters, PDC staff is requesting that the Commission take the following action:

- Reconsider its directives given on December 2, 2004 and January 25, 2005 to hold enforcement hearings for John Ladenburg, Pierce County Executive, Case #04-440 and Bill Ptacek, Director, King County Rural Library District, Case #05-125.
- Approve the recommended dismissal letters for John Ladenburg, Case #04-440 and Bill Ptacek, Case #05-125.

The reasons for the staff request are addressed in detail in each of the proposed enforcement letters. I will be happy to answer any questions you may have at the Commission meeting on March 31, 2005.

Enclosures

- Letters Regarding John Ladenburg
- Letters Regarding Bill Ptacek

DRAFT

March 24, 2005

DAVID L. FRANTA
13622 ROCKY CREEK RD
GIG HARBOR WA 98329

DALE WASHAM
PO BOX 73634
PUYALLUP WA 98373

DONALD R VEAL
2714 4TH ST NW
GIG HARBOR WA 98335

Subject: Complaint Filed Against John Ladenburg, Pierce County Executive - PDC Case No. 04-440

Dear Mssrs. Franta, Washam, & Veal:

The Public Disclosure Commission staff has completed its investigation of your complaints received October 31 and November 4, 2003 alleging that John Ladenburg, Pierce County Executive, used resources and facilities of Pierce County to support Pierce County Proposition #1 on the 2003 general election ballot.

The statute implicated by the complaint filed in this matter is RCW 42.17.130, which prohibits use of public facilities to support or oppose campaigns. On July 29, 2002, the King County Superior Court entered a permanent injunction that affected PDC activities to enforce and educate the public about RCW 42.17.130. The case was *Washington Education Association v. PDC*. The PDC had produced guidelines discussing RCW 42.17.130. The WEA filed a lawsuit challenging the guidelines and raising constitutional claims concerning RCW 42.17.130. Despite the PDC's objections, the superior court ordered the PDC to remove the guidelines from its website, to not further disseminate the guidelines as written or disseminate similar information about RCW 42.17.130, and to not initiate or engage in enforcement activities based upon the guidelines as written or similar information. The PDC appealed to the State Supreme Court. On December 11, 2003, the State Supreme Court reversed the superior court. The Supreme Court issued a mandate to the superior court on January 5, 2004, which formally concluded the case. The PDC resumed its usual activities regarding RCW 42.17.130. One of those activities was to process complaints that had been pending or were received at the time the permanent injunction was in effect. Investigation of your complaint was started March 3, 2004 following the State Supreme Court's reversal of the Permanent Injunction.

PDC staff reviewed your complaint in light of the following statute:

RCW 42.17.130 prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition.

You alleged that John Ladenburg, Pierce County Executive, used Pierce County facilities to support Proposition 1, a proposed public safety and criminal justice sales tax increase that was on the November 4, 2003 general election ballot by producing and distributing two postcards that promoted passage of Proposition 1, and that the postcards were targeted to registered voters. We found that:

- On August 5, 2003, the Pierce County Council introduced a Pierce County Ordinance to place a proposed public safety and criminal justice sales tax increase measure on the ballot. On September 2, 2003, the Council approved the ordinance, placing Proposition 1 on the November 4, 2003 general election ballot, a measure to increase the sales and use tax in Pierce County by three tenths of one percent, to fund criminal justice activities.
- The Pierce County Council appropriated \$60,000 to be used to distribute information to the public regarding the impacts of Proposition 1 on Pierce County.
- John Ladenburg, Pierce County Executive, authorized and approved the preparation and content of two large postcards that in PDC staff's opinion were promotional, and were not a fair and objective presentation of the facts. Ronald Klein is the Pierce County Director of Communications who wrote the postcards at Mr. Ladenburg's direction. The mailers were produced and mailed at a significant cost to Pierce County, \$55,060, not including staff time.
- The first postcard was mailed on October 16 and 17, 2003, approximately two weeks before the election. It was targeted to approximately 75,000 households with a voter who had voted in two of the last four elections. The first postcard contained several promotional phrases such as the measure will "**Assure** that offenders do not receive early release..." and it will "**Protect** victims and keep young people out of jail..."
- A second postcard was mailed October 29 and 30, 2003, four to five days before the November 4th election, targeted to the same audience. The second mailer was not materially different from the first mailer and went beyond stating the facts in a fair and objective manner and speculated on the impacts of passing Proposition 1. For example, in addition to stating that 100 new county and city police officers will be hired, it speculates that *law enforcement will be improved*. The second postcard appears to have been sent to reinforce the message in the first mailer, rather than to clarify information to the recipients.
- By emphasizing violent and serious felony crimes, and minimizing the sales tax increase, the information presented in the postcards was not a fair and objective presentation of the facts.

- Mr. Ladenburg stated that the mailings were sent to registered voters because funds were not available to send the postcards to all residents of Pierce County, and because he believed that likely voters were the residents most in need of receiving the information.
- Pierce County staff contacted PDC staff prior to finalizing the first mailing, and asked PDC staff for review and comment. PDC staff informed Pierce County staff that they were unable to review the draft document for apparent compliance with RCW 42.17.130 because an injunction had been issued by a King County Superior Court Judge. During this time, no fact sheets were reviewed.
- Mr. Ladenburg stated that had PDC staff reviewed the first mailer, Pierce County would have followed staff's advice and taken corrective action with regard to its content.

PDC staff believes there is evidence that John Ladenburg, Pierce County Executive, used resources and facilities of Pierce County to promote passage of Pierce County Proposition #1 on the 2003 general election ballot in violation of RCW 42.17.130, by publishing and distributing two postcards that were not a fair and objective presentation of the facts, and that were targeted to registered voters. However, because this action occurred during a time the injunction was in effect and when no guidance was available from PDC staff, we will not be taking enforcement action in this instance. Mr. Ladenburg will be cautioned that PDC staff believes his actions violated RCW 42.17.130, and that if he engages in similar actions in the future, enforcement action will likely be taken.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Public Disclosure Commission, I am dismissing your complaints against John Ladenburg, Pierce County Executive.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: John Ladenburg, Pierce County Executive
Ronald L. Williams, Pierce County Deputy Prosecuting Attorney

DRAFT

March 24, 2005

JOHN LADENBURG, PIERCE COUNTY EXECUTIVE
C/O PIERCE COUNTY PROSECUTING ATTORNEY'S OFFICE
RONALD L. WILLIAMS, DEPUTY PROSECUTING ATTORNEY
955 TACOMA AVENUE SOUTH, SUITE 301
TACOMA WA 98402-2160

Subject: Complaint filed by David L. Franta, Dale Washam, and Donald R. Veal, Alleging
Violation of RCW 42.17.130 – PDC Case No. 04-440

Dear Mr. Ladenburg:

The Public Disclosure Commission (PDC) staff has completed its investigation of the complaint filed by David L. Franta, Dale Washam, and Donald R. Veal against you. With respect to your actions that were alleged in the complaint to have violated RCW 42.17.130, those alleged actions occurred during a time a court injunction was in effect and when the constitutionality of the statute was being considered by the courts. Your alleged actions also occurred during a time the PDC staff did not answer questions or provide guidance to your office regarding the law, as it otherwise normally would have done. In light of these unusual circumstances, with the concurrence of the Public Disclosure Commission, I have dismissed the complaint filed by Mr. Franta, Mr. Washam, and Mr. Veal alleging that you violated RCW 42.17.130 by promoting passage of Proposition #1 on the 2003 general election ballot. Enclosed is a copy of the dismissal letter sent to the complainant.

PDC staff believes there is evidence that you used the facilities of Pierce County to promote passage of Proposition 1 in violation of RCW 42.17.130 by publishing and distributing two postcards that were not a fair and objective presentation of the facts, and that were targeted to registered voters. However, because this action occurred during a time when no guidance was available from PDC staff, we will not be taking enforcement action in this instance. I caution you to be aware of the actions you take in your official capacity as Pierce County Executive, and that you avoid using public facilities in a manner that may promote or oppose a ballot proposition. Please carefully review the content of future County publications and refrain from using language that promotes or opposes any ballot measure. In the future, if it appears to PDC staff that you used or authorized the use of public facilities in violation of RCW 42.17.130, enforcement action will likely be taken against you.

John Ladenburg, Case No. 04-440 **DRAFT**
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If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

Enclosure

DRAFT

March 24, 2005

WILL KNEDLIK
POST OFFICE BOX 99
KIRKLAND WA 98083

Subject: Complaint filed against Bill Ptacek, Director, King County Rural Library
District - PDC Case No. 05-125

Dear Mr. Knedlik:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received November 18, 2004 alleging that Bill Ptacek, Director, King County Rural Library District (King County Library System or KCLS) used the resources and facilities of KCLS to promote passage of Proposition #1 on the September 14, 2004 primary election ballot.

The statute implicated by the complaint filed in this matter is RCW 42.17.130, which prohibits use of public facilities to support or oppose campaigns. On July 29, 2002, the King County Superior Court entered a permanent injunction that affected PDC activities to enforce and educate the public about RCW 42.17.130. The case was *Washington Education Association v. PDC*. The PDC had produced guidelines discussing RCW 42.17.130. The WEA filed a lawsuit challenging the guidelines and raising constitutional claims concerning RCW 42.17.130. Despite the PDC's objections, the superior court ordered the PDC to remove the guidelines from its website, to not further disseminate the guidelines as written or disseminate similar information about RCW 42.17.130, and to not initiate or engage in enforcement activities based upon the guidelines as written or similar information. The PDC appealed to the State Supreme Court. On December 11, 2003, the State Supreme Court reversed the superior court. The Supreme Court issued a mandate to the superior court on January 5, 2004, which formally concluded the case. The PDC resumed its usual activities regarding RCW 42.17.130. One of those activities was to process complaints that had been pending or were received at the time the permanent injunction was in effect. The alleged actions of your allegations, that public facilities were used to promote a September 14, 2004 ballot measure, began during a time the injunction was in effect and when the constitutionality of the statute was being considered by the courts. In addition, the alleged actions of your allegations also began during a time the PDC would not have been available to answer questions or provide

guidance regarding that law, as it otherwise normally would have done. The alleged actions concluded, however, after the permanent injunction had been lifted.

PDC staff reviewed your complaint in light of the following statute:

RCW 42.17.130 prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition.

You alleged that officials of KCLS made wrongful gifts of public property to fund its associated campaign operation, and wrongfully exploited the prestige of this state's judiciary by listing the title of two KCLS board members that are King County Superior Court Judges. Those allegations were dismissed by the Commission as part of a report made to them by PDC staff at the January 25, 2005 Commission meeting.

In addition, you also alleged that officials of KCLS produced and distributed publications that contained misstatements about Proposition #1 to misinform voters, and that KCLS officials misused public assets, facilities and personnel to promote Proposition #1. We found that:

- Following a failed February 2003 Capital Bond Measure, KCLS assessed its losing efforts and made a plan for its next bond measure which was held September 14, 2004. As part of that assessment, KCLS found that people did not believe they did a good job of explaining what they were requesting in the 2003 bond measure, why that bond measure was needed, how much the bond measure would cost, and how the proceeds from the bond measure would be spent.
- As a result of that feedback, KCLS, at the direction of Mr. Ptacek, developed a plan for providing the needed information to the public for the September 14, 2004 Capital Bond Measure. The plan, which KCLS began implementing one year before the election, became known as the Bond Election Steering Team (BEST) Strategic Plan, and consisted of three major components that included: 1) educating library users, staff and stakeholders on the value of KCLS; 2) conducting direct outreach to key communities and building a broader knowledge base among voting populations; and 3) conducting outreach to key local and regional media and serving as a resource to local media.
- The communication plan for sharing information with the public about the September 14, 2004 ballot proposition was similar in nature and size to many of its previous public information efforts concerning significant library system projects, such as its 2000 Library Card campaign, its 2002 Levy Lid Lift Election, and its 2002 Library Choices effort.
- KCLS implemented a much more comprehensive plan for its September 14, 2004 election than for its February 4, 2003 Capital Bond Measure that failed. The communication plan for the September 14, 2004 election included an extensive public information campaign.

- The plan was implemented at the direction of Mr. Ptacek and was designed to remind and convince residents of the District of the value of KCLS, why a capital bond measure was needed, and what it would pay for.
- As part of the Communication plan, Mr. Ptacek directed KCLS to develop and implement several communication tools that included: 1) an informational video shown to a variety of library user groups; 2) brochures that were handed out in libraries; 3) postcards that were mailed to residents of the KCLS; 4) bookmarks distributed to patrons of the libraries; 5) banners and copies of postcards for the libraries; 6) mouse pad inserts that were placed at computer workstations in libraries; 7) stickers given to library patrons, mostly children; 8) book bags for library patrons; 9) a website for anyone desiring additional information about the bond measure, and 10) the use of a consultant to shape message for KCLS publications.
- The cost for the video and the printed materials listed above for the 2004 Bond measure was \$123,933, which included the fees paid to a KCLS consultant. A portion of the consultant's work was for shaping and refining the KCLS long-term communication strategies with the public.
- The informational video was produced at a cost of \$11,500, and provided general information about the District, its resources and services, and showed people using the library system for a variety of purposes. The video included several positive testimonials with individual users explaining why the library was of value to them and included positive statements like, "*the KCLS provides taxpayers with an excellent return on investment*", and reminded listeners that if the bond measure is not approved, the funds for capital projects will come out of the operating budget which will severely impact staffing and services. The informational video provided a significant amount of information about the value of the library system, but only briefly addressed the relevant facts about the cost of the bond measure.
- The printed materials, including a brochure and postcard, contained pictures of children reading and described the library system stating, "*To meet community needs, maintain a strong Library System and plan appropriate facilities for the next decade, replacement funding is essential.*" The information in the printed materials stated the total bonds to be issued (\$172 million), described the cost of the bonds and said, "*This replacement bond would cost each household less than the bond currently in place — an average of \$25 per year, the cost of one book.*" The information left the reader with the impression that expiration of the current bonds is imminent, but failed to inform the readers that the current bonds expire in 2011 and that the new bonds will be repaid over a 20 year period.
- Voters passed the KCLS \$172 million Capital Bond Measure on September 14, 2004.

PDC staff believes there is evidence that Bill Ptacek, Director, King County Rural Library District, used resources and facilities of KCLS to promote passage of Proposition #1 on the 2004 primary election ballot in violation of RCW 42.17.130, by developing and

implementing several communication tools that taken as a whole, constituted a campaign to promote passage of the ballot measure. However, because this action began during a time the injunction was in effect and when no guidance was available from PDC staff, we will not be taking enforcement action in this instance. Mr. Ptacek will be cautioned that PDC staff believes his actions violated RCW 42.17.130, and that if he engages in similar actions in the future, enforcement action will likely be taken.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Public Disclosure Commission, I am dismissing your complaints against Bill Ptacek, Director, King County Rural Library District.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Bill Ptacek, Director, King County Rural Library District

DRAFT

March 24, 2005

BILL PTACEK, DIRECTOR, KING COUNTY RURAL LIBRARY DISTRICT
C/O STEPHEN A SMITH, PRESTON GATES & ELLIS LLP
925 FOURTH AVE STE 2900
SEATTLE WA 98104-1158

Subject: Complaint filed by Will Knedlik Alleging Violation of RCW 42.17.130 – PDC Case No. 05-125

Dear Mr. Ptacek:

The Public Disclosure Commission (PDC) staff has completed its investigation of the complaint filed by Will Knedlik against you. With respect to your actions that were alleged in the complaint to have violated RCW 42.17.130, those alleged actions began during a time a court injunction was in effect and when the constitutionality of the statute was being considered by the courts. Your alleged actions also began during a time the PDC would not have been available to answer questions or provide guidance regarding the law, as it otherwise normally would have done. Your alleged actions concluded, however, after the permanent injunction had been lifted. In light of these unusual circumstances, with the concurrence of the Public Disclosure Commission, I have dismissed the complaint filed by Mr. Knedlik alleging that you violated RCW 42.17.130 by promoting passage of Proposition 1 on the September 14, 2004 primary election ballot. Enclosed is a copy of the dismissal letter sent to the complainant.

PDC staff believes there is evidence that you used resources and facilities of KCLS to promote passage of Proposition #1 on the 2004 primary election ballot in violation of RCW 42.17.130, by developing and implementing several communication tools that taken as a whole, constituted a campaign to promote passage of the ballot measure. In addition, the messages on the video, the brochures handed out in libraries, postcards mailed to residents of the district, and bookmarks distributed to patrons of the libraries included promotional language or images. However, because this action began during a time the injunction was in effect and when no guidance was available from PDC staff, we will not be taking enforcement action in this instance.

I caution you to be aware of the actions you take in your official capacity as Director of the King County Rural Library District, and to avoid using public facilities in a manner that promotes or opposes a ballot proposition. Please carefully review any election-related document or video to verify that it is a fair and objective presentation of the facts. Further, review the overall impact

of a combination of communication tools used to provide information about a ballot measure that, taken as a whole, constitute a campaign to promote its passage, and refrain from engaging in an effort that promotes or opposes any ballot measure. As stated on page 4, PDC Interpretation Guidelines for Local Government Agencies in Election Campaigns, *“Agencies need to be aware, however, that in no case will the PDC view a marketing or sales effort related to an election as normal and regular conduct”* even if such efforts had been undertaken for other projects. In the future, if it appears to PDC staff that you used or authorized the use of public facilities in violation of RCW 42.17.130, enforcement action will likely be taken against you.

If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

Enclosure